

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE
1425 Strawberry Square
Harrisburg, Pennsylvania 17120

DOCKET FILE COPY ORIGINAL

IRWIN A. POPOWSKY
Consumer Advocate

October 28, 1997

(717) 783-5048

RECEIVED

OCT 29 1997

Via Federal Express

FCC MAIL ROOM

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, DC 20554

Re: Common Carrier Bureau Request for
Comments Concerning Clarification of the
term "Technology Neutral"
DA 97-2234

CC92-237

Dear Secretary:

Enclosed please find an original and four copies of the Comments of the Pennsylvania Office of Consumer Advocate for filing with the Commission in the above-referenced matter.

Please indicate your receipt of this filing on the additional copy provided and return to the undersigned in the enclosed self-addressed, postage prepaid, envelope. Thank you. As evidenced by the attached Certificate of Service, all parties to this proceeding have been duly served.

Sincerely yours,

Philip F. McClelland
Assistant Consumer Advocate

Enclosure
33125

No. of Copies rec'd 0+3
List ABCDE

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

Common Carrier Bureau Request for
Comments Concerning Clarification
of the term "Technology Neutral"

DA 97-2234

CC 92-237

RECEIVED

OCT 29 1997

FCC MAIL ROOM

COMMENTS OF THE
PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE
CONCERNING TECHNOLOGY NEUTRALITY

Philip F. McClelland
Assistant Consumer Advocate

For:
Irwin A. Popowsky
Consumer Advocate

Office of Attorney General
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

DATED: October 28, 1997

I. INTRODUCTION

The Pennsylvania Office of Consumer Advocate (PaOCA) addresses the request of the Common Carrier Bureau for Comments concerning the meaning of "technology neutral." The Common Carrier Bureau issued a Public Notice and request for Comments on October 20, 1997. This request was initiated in response to a letter from the Chairman of the North American Numbering Council (NANC) on August 22, 1997 concerning the differing views held by various parties within NANC concerning the meaning of the term "technology neutral." This issue is closely related to recent actions taken by the Pennsylvania Public Utility Commission (PUC) where the PUC ordered various number conservation measures at a time when additional area codes had been requested in Pennsylvania. The PaOCA supports the actions of the PUC. Further, it is the position of the PaOCA that the PUC's action was technology neutral and did not constitute discrimination against wireless carriers. Those issues will be addressed here as well.

II. INTEREST OF PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE

The PaOCA is an office created by the Pennsylvania General Assembly to represent the interests of consumers before state and federal agencies and courts that regulate the activities of Pennsylvania public utilities. 71 Pa. Stat. Ann. § 309-4(a). As the Common Carrier Bureau is now considering an issue that will have an effect upon what area codes and numbering resources are applied in Pennsylvania, this issue will affect consumers and is relevant to the PaOCA.

III. PRESENTATION OF COMMENTS

A. Requiring NXX-X LRN Pooling Is Technology Neutral.

The PaOCA understands that the issue has been raised as to whether it is "technology neutral" to address area code depletion by implementing NXX-X Location Routing Number (LRN) pooling prior to the date when all carriers have implemented Local Number Portability (LNP). Notably, the question has arisen in Pennsylvania as to whether it is acceptable to require wireline carriers to implement NXX-X LRN pooling prior to the date when wireless carriers have implemented LNP.

In an Order issued on July 15, 1997, the PUC required wireline carriers to implement NXX-X LRN pooling in order to conserve NPA and NXX codes. Petition of NPA Relief Coordinator Re: 412 Area Code Relief Plan, Petition of NPA Relief Coordinator Re: 215/610 Area Code Relief Plan, Petition of NPA Relief Coordinator Re: 717 Area Code Relief Plan, Docket Nos. P-00961027, P-00961061, P-00961071. This is a logical and necessary step toward number assignment efficiency given that LNP is scheduled to begin in the Philadelphia Metropolitan Statistical Area by February, 1998. As of that date carriers will begin sharing NPA-NXX codes whenever the customers migrate from one local service provider to another. Thus, Bell Atlantic - Pennsylvania, Inc., MCI Metro, Teleport Communications Group, etc. will begin to share NPA-NXX codes whether or not NXX-X LRN portability is required by PUC or FCC directive.

Given that fact, it makes little sense to continue to require carriers to continue to take number assignments in 10,000 number NPA-NXX blocks in every rate center. Such a wasteful practice creates substantial problems of number exhaustion for consumers generally. It

makes sense for carriers that are capable of participating in LNP to also accommodate NXX-X LRN number pooling.

Moreover, preventing NXX-X LRN pooling from going forward creates no benefit for anyone. The Bureau should consider that numbering resources represent a scarce resource that generally should be conserved. Allowing conservation through NXX-X LRN pooling to go forward for some carriers does not in any way disadvantage others. To the extent that wireline carriers are able to enjoy the benefits of more efficient use of numbering resources through NXX-X LRN pooling makes more NPA-NXX codes available for other carriers, including wireless carriers. If the PUC did not encourage NXX-X LRN pooling, this would make even fewer NPA-NXX codes available in the Philadelphia 215/610 area codes. This would not benefit either wireline or wireless carriers. Thus, any action that the Bureau might take in order to discourage NXX-X LRN pooling would be counter to the public interest.

B. Requiring Some Carriers to Implement NXX-X LRN Pooling, as They Are Capable of Such Action, Is Technology Neutral and Does Not Discriminate Against Any Carriers.

1. Introduction.

PaOCA understands that some carriers have alleged that the PUC's Order, which required only wireline carriers to implement NXX-X LRN pooling, discriminates against other carriers that have not developed such capability. A similar allegation is that such action was not "technology neutral."

2. The Wireless Carriers' Delay Until July, 1999 to Implement LNP Does Not Make the PUC's Numbering Plan Discriminatory or Not Technology Neutral.

Apparently the allegation of discrimination and a violation of technology neutrality

recognizes that wireline carriers will provide LNP before July, 1999, but wireless carriers will not. The decision of wireless carriers as to LNP deployment does not create the type of undue discrimination that the FCC has prohibited.

The FCC has required wireless providers to implement LNP because this was in the public interest and would promote competition. In the Matter of Telephone Number Portability, First Report and Order, CC Docket No. 95-116, 11 FCC Rcd 8431, 8435 (1996) (“Number Portability Order”). The FCC determined, in the Number Portability Order, however, that it would not require wireless carriers to provide LNP prior to June 30, 1999.¹ Id. at 8440. However, the FCC did not prohibit wireless carriers from implementing LNP prior to that date. The FCC noted that: “Individual [wireless] carriers, of course, may implement number portability sooner, and we expect that some carriers will do so based on individual technical, economic and marketing considerations.” Id. The FCC also found that wireless carriers “will face burdens comparable to wireline carriers in modifying their networks to implement number portability, and that any technical issues that are unique to those carriers can be resolved” and that none of the related difficulties “are insurmountable.” Id. at 8438.

In short, wireless carriers will have LNP capability as soon as they make the necessary network changes to provide it. The PUC Order has offered an equal opportunity for all carriers - wireline and wireless alike - to use LNP based number pooling. The PUC has not forced any wireless carriers to upgrade their networks in order to use such number pooling but offered the same opportunity to all. The Bureau should not inflict any additional barriers to

¹ The FCC also rejected the argument of Bell Atlantic NYNEX Mobile that the number portability requirements of the Telecommunications Act of 1996 did not require wireless providers to implement number portability. Id. at 8425.

network efficiency because some carriers may choose to operate more efficiently than others.

3. The PUC's Offer to Allow All Carriers to Use LNP Based Number Pooling Does Not Constitute Discrimination.

The PUC Order that requires wireline carriers to use NXX-X LRN pooling is not the type of technology specific area code application that the FCC has rejected in the past. The PUC's Order contains none of the discrimination that the FCC has prohibited in Administration of the North American Numbering Plan, Second Report and Order, CC Docket 92-237, 11 FCC Rcd 19392 (1996) ("Numbering Plan Order"). The FCC explained in the Numbering Plan Order that it would continue to prohibit service-specific or technology-specific area code overlays.

Numbering Plan Order at 19516. The FCC explained the type of overlays that it would prohibit as follows:

First, we conclude that any overlay that would segregate only particular types of telecommunications services or particular types of telecommunications technologies in discreet area codes would be unreasonably discriminatory and would unduly inhibit competition. We therefore clarify the *Ameritech Order* by explicitly prohibiting all service-specific or technology specific area code overlays because every service-specific or technology-specific overlay plan would exclude certain carriers or services from the existing area code and segregate them in a new area code. Among other things, the implementation of a service or technology specific overlay requires that only existing customers of, or customers changing to, that service or technology change their numbers. Exclusion and segregation were specific elements of Ameritech's proposed plan, each of which the Commission held violated the Communications Act of 1934.

Id. at 19518. LNP based pooling suffers from none of these problems.

The FCC also reaffirmed its general numbering administrative guidelines as follows: "Existing Commission guidelines, which were originally enumerated in the *Ameritech*

Order, state that numbering administration should: (1) seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient and timely basis; (2) not unduly favor or disadvantage any particular industry segment or group of consumers; and (3) not unduly favor one technology over another." *Id.* (emphasis added). This decision to treat all carriers the same, regardless as to the technology that they use, is the heart of any "technology neutral" requirement.

The PaOCA emphasizes that NXX-X LRN pooling emphasizes the efficiency goal set forth above. Taken as a whole the PUC's Order also does "not unduly favor or disadvantage any particular industry segment or group of consumers." *Id.*

Moreover, the FCC has explained how a test for undue discrimination must be applied in In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, Declaratory Ruling and Order, 10 FCC Rcd 4596, 4607 (1995) ("Ameritech Order"). This test requires an examination as to whether 1) "like" services are offered to different customers, 2) "like" services are offered under different terms and conditions, and 3) differing terms and conditions to "like" customers are justified under the circumstances.² Ameritech Order at 4607 citing MCI v. FCC, 917 F.2d 30, 39 (1990). The PUC has offered to all carriers the same opportunity and so there is simply no discrimination under the test applied in the Ameritech Order. No distinctions as to how various carriers, industries or consumers will be treated has been proposed in the PUC Order. Thus, any discrimination and technology inequality claim must fail under the test adopted by the FCC.

4. The PUC Has Not Ordered the Type of Service Specific Area Code

² See, MCI v. FCC, 917 F.2d 30 (D.C. Cir. 1990)

Implementation that the FCC Has Found to Be Discriminatory

Moreover, the PUC's Order requiring NXX-X LRN pooling is distinct from other area code implementation orders which the FCC has found to violate its discrimination prohibitions as it affects wireless carriers. The FCC found that the area code plan examined in the Ameritech Order³ was discriminatory because the plan excluded wireless carriers from using telephone numbers in some area codes, the plan would eventually segregate wireless carriers into one area code, and the plan would take back NPA-NXX blocks only from wireless carriers. Id. at 4608. Specifically, Ameritech proposed to apply a 630 wireless only area code over the preexisting 312 and 708 area codes serving the Chicago area. Id. at 4597. Ameritech would exclude only wireless carriers from receiving any further assignment of any NPA-NXX codes in the 708 area code. Id. at 4598. Ameritech would take back from wireless carriers all NPA-NXX codes previously assigned in the 708 and 312 area codes. Id. The FCC found that Ameritech's decision to exclude, segregate and take back NPA-NXX codes only from wireless carriers was unlawful and discriminatory. Id.

The PaOCA submits that the numbering plan set forth in the Pennsylvania PUC Order is nondiscriminatory as it affects wireless carriers. Wireless carriers are not given any disadvantage in comparison with how wireline carriers are to be treated. Wireless carriers are not excluded from any area code or forced to move into any area code. Wireless carriers are given the same opportunity to use NPA-NXX codes that wireline carriers have been given. Even

³ A similar issue arose from an area code relief Order which the Texas Public Utility Commission adopted that would have created a wireless overlay. The FCC found the Texas and Ameritech proposals to be similar. The FCC rejected the Texas proposal in the Numbering Plan Order at 19527.

though wireless carriers contend that they will be less able to use the mechanisms offered by the PUC given their network limitations, this does not constitute discrimination as a lack of technology neutrality under the FCC's determinations.

5. Wireless Carriers Have Received Special NPA Benefits in the Past.

While wireless carriers appear to argue against any numbering administration requirements that they believe would disadvantage their operations, they have in the past freely advocated that wireless carriers should be grandfathered from any requirement to change telephone numbers whenever a geographic split should occur. These forms of past favoritism must be considered when examining wireless carriers' claims of discrimination.

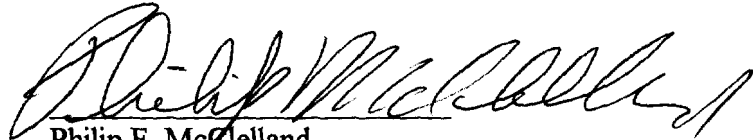
For example, in the PUC's July 15, 1997 Order the PUC has suggested that wireless customers in the current 412 area code will be exempted from being forced to change their telephone numbers to the new 724 area code. This may arguably be considered as a form of discrimination providing an advantage to wireless carriers alone. Thus, all wireline customers in the new 724 area code will be forced to contend with the difficulty of changing their area code, even though wireless customers in the same geographic area will not.

Clearly, wireless carriers wish to promote a wireless advantage in the 412 area, but are unwilling to allow wireline carriers to take advantage of NXX-X LRN pooling in other Pennsylvania area codes. Past advantages conferred upon wireless carriers must be considered in terms of current claims of discrimination.

IV. CONCLUSION

The OCA submits that the Bureau should consider these Comments as it determines the meaning of "technology neutral."

Respectfully submitted,



Philip F. McClelland
Assistant Consumer Advocate

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120
(717) 783-5048

DATED: October 28, 1997
44409

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document, Comments Of The Pennsylvania Office Of Consumer Advocate, was sent by first class mail, postage prepaid, on this 28th day of October, 1997 to the parties listed below.



Philip F. McClelland
Assistant Consumer Advocate

International Transcription Services, Inc.
1231 20th Street, N.W.
Washington, DC 20037

Jeannie Grimes
Common Carrier Bureau
FCC, Suite 235
2000 M Street, N.W.
Washington, DC 20554